

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Alma Center LLC, a California
Limited Liability Company; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Alma Center LLC, a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Alma Center LLC owned the real property located at or about 148 W Alma Ave, San Jose, California, between July 2019 and July

1 2020.

2 3. Defendant Alma Center LLC owns the real property located at or about
3 148 W Alma Ave, San Jose, California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for the
10 events herein alleged, or is a necessary party for obtaining appropriate relief.
11 Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14
15 **JURISDICTION & VENUE:**

16 5. The Court has subject matter jurisdiction over the action pursuant to 28
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 8. Plaintiff went to the property to eat at Carnitas El Rincon ("Restaurant")

1 in July 2019, January 2020, March 2020 and July 2020 (twice) with the
2 intention to avail himself of its goods motivated in part to determine if the
3 defendants comply with the disability access laws.

4 9. The Restaurant is a facility open to the public, a place of public
5 accommodation, and a business establishment.

6 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
7 to provide wheelchair accessible parking in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 11. The Restaurant provides parking to its customers but fails to provide
10 wheelchair accessible parking.

11 12. The problem that plaintiff encountered is that the parking stall and
12 access aisle marked and reserved for persons with disabilities had slopes that
13 exceeded 2.1%. Additionally, the paint in the parking space reserved for
14 persons with disabilities has faded.

15 13. Plaintiff believes that there are other features of the parking that likely
16 fail to comply with the ADA Standards and seeks to have fully compliant
17 parking available for wheelchair users.

18 14. On information and belief the defendants currently fail to provide
19 wheelchair accessible parking.

20 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
21 personally encountered these barriers.

22 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
23 wheelchair accessible facilities. By failing to provide accessible facilities, the
24 defendants denied the plaintiff full and equal access.

25 17. The failure to provide accessible facilities created difficulty and
26 discomfort for the Plaintiff.

27 18. The defendants have failed to maintain in working and useable
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 19. The barriers identified above are easily removed without much
3 difficulty or expense. They are the types of barriers identified by the
4 Department of Justice as presumably readily achievable to remove and, in fact,
5 these barriers are readily achievable to remove. Moreover, there are numerous
6 alternative accommodations that could be made to provide a greater level of
7 access if complete removal were not achievable.

8 20. Plaintiff will return to the Restaurant to avail himself of its goods and to
9 determine compliance with the disability access laws once it is represented to
10 him that the Restaurant and its facilities are accessible. Plaintiff is currently
11 deterred from doing so because of his knowledge of the existing barriers and
12 his uncertainty about the existence of yet other barriers on the site. If the
13 barriers are not removed, the plaintiff will face unlawful and discriminatory
14 barriers again.

15 21. Given the obvious and blatant nature of the barriers and violations
16 alleged herein, the plaintiff alleges, on information and belief, that there are
17 other violations and barriers on the site that relate to his disability. Plaintiff will
18 amend the complaint, to provide proper notice regarding the scope of this
19 lawsuit, once he conducts a site inspection. However, please be on notice that
20 the plaintiff seeks to have all barriers related to his disability remedied. See
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
22 encounters one barrier at a site, he can sue to have all barriers that relate to his
23 disability removed regardless of whether he personally encountered them).

24
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
26 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 23. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADA Standards.
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to the
21 maximum extent feasible, the path of travel to the altered area and
22 the bathrooms, telephones, and drinking fountains serving the
23 altered area, are readily accessible to and usable by individuals
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 24. When a business provides parking for its customers, it must provide
26 accessible parking.

27 25. Here, accessible parking has not been provided in conformance with the
28 ADA Standards.

1 26. The Safe Harbor provisions of the 2010 Standards are not applicable
2 here because the conditions challenged in this lawsuit do not comply with the
3 1991 Standards.

4 27. A public accommodation must maintain in operable working condition
5 those features of its facilities and equipment that are required to be readily
6 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

7 28. Here, the failure to ensure that the accessible facilities were available
8 and ready to be used by the plaintiff is a violation of the law.

9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
10 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
11 Code § 51-53.)

12 29. Plaintiff repleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
15 that persons with disabilities are entitled to full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishment of
17 every kind whatsoever within the jurisdiction of the State of California. Cal.
18 Civ. Code § 51(b).

19 30. The Unruh Act provides that a violation of the ADA is a violation of the
20 Unruh Act. Cal. Civ. Code, § 51(f).

21 31. Defendants’ acts and omissions, as herein alleged, have violated the
22 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
23 rights to full and equal use of the accommodations, advantages, facilities,
24 privileges, or services offered.

25 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
26 discomfort or embarrassment for the plaintiff, the defendants are also each
27 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
28 (c).)

1 33. Although the plaintiff encountered frustration and difficulty by facing
2 discriminatory barriers, even manifesting itself with minor and fleeting
3 physical symptoms, the plaintiff does not value this very modest physical
4 personal injury greater than the amount of the statutory damages.

5
6 **PRAYER:**

7 Wherefore, Plaintiff prays that this Court award damages and provide
8 relief as follows:

9 1. For injunctive relief, compelling Defendants to comply with the
10 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
11 plaintiff is not invoking section 55 of the California Civil Code and is not
12 seeking injunctive relief under the Disabled Persons Act at all.

13 2. Damages under the Unruh Civil Rights Act, which provides for actual
14 damages and a statutory minimum of \$4,000 for each offense.

15 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
16 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

17 Dated: September 16, 2020 CENTER FOR DISABILITY ACCESS

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20 By: 

21 _____
22 Amanda Seabock, Esq.
23 Attorney for plaintiff
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